

REFERENCE TITLE: incompetent persons; prosecuting agency; notification

State of Arizona
Senate
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First Regular Session
2009

SB 1144

Introduced by
Senators Aguirre, Burton Cahill, Landrum Taylor, Lopez, Nelson, Rios;
Representatives McGuire, Pancrazi; Senators Allen C, Alvarez, Hale, McCune
Davis; Representative Jones

AN ACT

AMENDING SECTIONS 36-540.01 AND 36-541.01, ARIZONA REVISED STATUTES; RELATING
TO COURT-ORDERED TREATMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-540.01, Arizona Revised Statutes, is amended to
3 read:

4 36-540.01. Conditional outpatient treatment

5 A. The medical director may issue an order for conditional outpatient
6 treatment for a patient ordered to undergo treatment pursuant to section
7 36-540 if, after consultation with staff familiar with the patient's case
8 history, the medical director determines with a reasonable degree of medical
9 probability that all of the following apply:

10 1. The patient no longer requires continuous inpatient
11 hospitalization.

12 2. The patient will be more appropriately treated in an outpatient
13 treatment program.

14 3. The patient will follow a prescribed outpatient treatment plan.

15 4. The patient will not likely become dangerous, suffer more serious
16 physical harm or serious illness or further deteriorate if the patient
17 follows a prescribed outpatient treatment plan.

18 B. The order for conditional outpatient treatment issued by the
19 medical director shall include a written outpatient treatment plan prepared
20 by staff familiar with the patient's case history and approved by the medical
21 director. The plan shall include all of the following:

22 1. A statement of the patient's requirements, if any, for supervision,
23 medication and assistance in obtaining basic needs such as employment, food,
24 clothing or shelter.

25 2. The address of the residence where the patient is to live and the
26 name of the person in charge of the residence, if any.

27 3. The name and address of any person, agency or organization assigned
28 to supervise an outpatient treatment plan or care for the patient, and the
29 extent of authority of the person, agency or organization in carrying out the
30 terms of the plan.

31 4. The conditions for continued outpatient treatment, which may
32 require periodic reporting, continuation of medication and submission to
33 testing, and may restrict travel, consumption of spirituous liquor and drugs,
34 associations with others and incurrence of debts and obligations or such
35 other reasonable conditions as the medical director may specify.

36 C. Before release for conditional outpatient treatment, the patient
37 shall be provided with copies and full explanations of the medical director's
38 order and the treatment plan. If, after full explanation, the patient
39 objects to the plan or any part of it, the objection and reasons for the
40 objection shall be noted in the patient's record. The medical director's
41 order and treatment plan shall be filed in the patient's medical file and
42 shall also be filed with the court.

43 D. The period for which conditional outpatient treatment may be
44 ordered may not exceed the remainder of the period of court ordered
45 treatment.

1 E. Before the release of a patient found to be a danger to others for
2 outpatient treatment, the medical director shall give notice pursuant to
3 section 36-541.01, subsection B, and a motion for a determination by the
4 court as to whether the standard for conditional release of the patient has
5 been met may be made by the persons and in the manner provided for in section
6 36-541.01, subsection ~~G~~ H. Before the release of a person found to be a
7 danger to self, to be persistently or acutely disabled or to be gravely
8 disabled for outpatient treatment, the medical director shall give notice to
9 the court that ordered the patient to undergo treatment. THE MEDICAL
10 DIRECTOR SHALL NOTIFY THE PROSECUTING AGENCY'S OFFICE IF CRIMINAL CHARGES
11 AGAINST A PATIENT ARE DISMISSED, A CIVIL COMMITMENT ORDER ISSUED PURSUANT TO
12 THIS CHAPTER EXPIRES, IS TERMINATED OR IS DENIED OR IF THE PATIENT IS
13 DISCHARGED TO OUTPATIENT TREATMENT. THE MEDICAL DIRECTOR SHALL PROVIDE THIS
14 NOTICE BY MAIL, POSTAGE PREPAID, AT LEAST TEN DAYS BEFORE THE ANTICIPATED
15 DATE OF THE EXPIRATION, TERMINATION OR DISCHARGE AND AS SOON AS REASONABLY
16 POSSIBLE AFTER A PETITION IS DENIED. THE TEN DAY NOTICE REQUIREMENT BEGINS
17 THE DAY AFTER THE NOTICE IS MAILED.

18 F. The medical director shall require periodic reports concerning the
19 condition of patients on conditional outpatient treatment from any person,
20 agency or organization assigned to supervise an outpatient treatment plan.
21 ~~Such~~ THE MEDICAL DIRECTOR SHALL REQUIRE THESE reports ~~shall be required~~ at
22 intervals not to exceed thirty days.

23 G. The medical director shall review the condition of a patient on
24 conditional outpatient treatment at least once every thirty days and enter
25 the findings in writing in the patient's file. In conducting the review, the
26 medical director shall consider all reports and information received and may
27 require the patient to report for further evaluation.

28 H. The medical director may amend any part of the outpatient treatment
29 plan during the course of conditional outpatient treatment. If the plan is
30 amended, the medical director shall issue a new order including the amended
31 outpatient treatment plan. The new order and amended outpatient treatment
32 plan shall be filed in the patient's medical file. Copies of the new order
33 and outpatient treatment plan shall be immediately provided to the patient
34 and to any person, agency or organization assigned to supervise an outpatient
35 treatment plan. Copies of the new order and outpatient treatment plan shall
36 be immediately filed with the court.

37 I. The medical director may rescind an order for conditional
38 outpatient treatment and order the patient to return to a mental health
39 treatment agency at any time during the period of court ordered treatment if,
40 in the medical director's judgment, the patient has failed to comply with a
41 term of the outpatient treatment plan or if, for any reason, the medical
42 director determines that the patient needs inpatient treatment or that
43 conditional outpatient treatment is no longer appropriate.

44 J. If the medical director rescinds an order for conditional
45 outpatient treatment and the patient is returned to a mental health treatment

1 agency for inpatient treatment, the patient shall be informed of the
2 patient's right to judicial review and right to consult with counsel pursuant
3 to section 36-546.

4 K. If the medical director rescinds an order for conditional
5 outpatient treatment and orders the patient to return to a mental health
6 treatment agency, the medical director may request a peace officer or a
7 designated officer or employee of the treatment agency to take the patient
8 into custody for immediate delivery to the agency pursuant to section 36-544.

9 L. The medical director is not civilly liable for any act committed by
10 a patient while on conditional outpatient treatment if the medical director
11 has in good faith followed the requirements of this section.

12 M. This section does not prevent the medical director from authorizing
13 a patient ordered to undergo treatment pursuant to section 36-540 as a danger
14 to self, a danger to others, persistently or acutely disabled or gravely
15 disabled to leave the treatment agency for periods of no more than five days
16 under the care, custody and control of a spouse, relative or other
17 responsible person if the medical director determines that the patient will
18 not become dangerous or suffer serious physical harm or illness during that
19 time.

20 N. The medical director may authorize a patient who is civilly
21 committed pursuant to section 36-540 to leave the state hospital grounds
22 unaccompanied if the leave is part of an inpatient individualized treatment
23 and discharge plan, ~~and if~~ the medical director determines that the patient
24 will not become dangerous or suffer serious physical harm or illness during
25 that time.

26 Sec. 2. Section 36-541.01, Arizona Revised Statutes, is amended to
27 read:

28 36-541.01. Release or discharge from treatment before
29 expiration of period ordered by court;
30 notification of intent to release or discharge;
31 hearing

32 A. A patient ordered to undergo treatment pursuant to this article may
33 be released from treatment ~~prior to~~ BEFORE the expiration of the period
34 ordered by the court if, in the opinion of the medical director of the mental
35 health treatment agency, the patient no longer is, as a result of a mental
36 disorder, a danger to others, a danger to self, persistently or acutely
37 disabled or gravely disabled. No person ordered to undergo treatment as a
38 danger to others may be released or discharged from treatment ~~prior to~~ BEFORE
39 the expiration of the period for treatment ordered by the court unless the
40 medical director first gives notice of intention to do so as provided by this
41 section.

42 B. ~~Prior to~~ BEFORE the release or discharge of a patient ordered to
43 undergo treatment as a danger to others, the medical director of the mental
44 health treatment agency shall ~~give notice of his~~ NOTIFY THE FOLLOWING OF THE

1 MEDICAL DIRECTOR'S intention to release or discharge the patient: ~~Notice~~
2 ~~shall be given to~~

3 1. The presiding judge of the court ~~which~~ THAT entered the order for
4 treatment. ~~;~~

5 2. Any relative or victim of the patient who has filed a demand for
6 notice with the treatment agency and any person found by the court to have a
7 legitimate reason for receiving ~~such~~ notice.

8 C. THE MEDICAL DIRECTOR SHALL NOTIFY THE PROSECUTING AGENCY'S OFFICE
9 IF CRIMINAL CHARGES AGAINST A PATIENT ARE DISMISSED, A CIVIL COMMITMENT ORDER
10 ISSUED PURSUANT TO THIS CHAPTER EXPIRES, IS TERMINATED OR IS DENIED OR IF THE
11 PATIENT IS DISCHARGED TO OUTPATIENT TREATMENT. THE MEDICAL DIRECTOR SHALL
12 PROVIDE THIS NOTICE BY MAIL, POSTAGE PREPAID, AT LEAST TEN DAYS BEFORE THE
13 ANTICIPATED DATE OF THE EXPIRATION, TERMINATION OR DISCHARGE AND AS SOON AS
14 REASONABLY POSSIBLE AFTER A PETITION IS DENIED. THE TEN DAY NOTICE
15 REQUIREMENT BEGINS THE DAY AFTER THE NOTICE IS MAILED.

16 ~~G.~~ D. If the director of the mental health treatment agency is unable
17 to determine, based ~~upon~~ ON the information submitted pursuant to subsection
18 ~~D.~~ E, that a person who has filed a demand for notice is a victim ~~he~~ THE
19 MEDICAL DIRECTOR shall inform that person that ~~his~~ THE PERSON'S demand for
20 notice is denied and that notice will not be given unless ordered by the
21 court pursuant to subsection ~~E.~~ F.

22 ~~D.~~ E. A demand for notice by a relative or victim, and a petition for
23 notice by other persons, shall be on a form prescribed by the department and
24 shall include the following information:

25 1. The full name of the person to receive notice.
26 2. The address to which notice is to be mailed.
27 3. The telephone number of the person to receive notice.
28 4. The relationship to the patient, if any, or the reasons why the
29 person believes ~~he~~ THE PERSON has a legitimate reason to receive notice.

30 5. A statement that the person will advise the treatment agency in
31 writing by certified mail, return receipt requested, of any change in the
32 address to which notice is to be mailed.

33 6. The full name of the patient ordered to undergo treatment as a
34 danger to others.

35 7. The mental health number assigned to the case by the superior
36 court.

37 ~~E.~~ F. If the court receives a demand for notice by a relative or
38 victim, the court shall order the medical director of the mental health
39 treatment agency not to release or discharge the patient before the
40 expiration of the period of court-ordered treatment without first giving
41 notice to the relative or victim as provided in subsection ~~F.~~ G. After
42 considering a petition for notice, if the court finds that the petitioner has
43 a legitimate reason for receiving prior notice, the court may order the
44 medical director of the mental health treatment agency not to release or
45 discharge the patient from inpatient treatment before the expiration of the

1 period of court-ordered treatment without first giving notice to the
2 petitioner as provided in subsection ~~F~~ G. Any order for notice shall be
3 delivered to the mental health treatment agency and shall be filed with the
4 patient's clinical record. If the patient is transferred to another agency
5 or institution, any orders for notice shall be transferred with the patient.

6 ~~F~~ G. A notice of intention to release or discharge shall include the
7 following information:

8 1. The name of the patient to be released or discharged.

9 2. The type of release or discharge.

10 3. The date of anticipated release or discharge. Notices shall be
11 placed in the mail, postage prepaid and addressed to the court and to each
12 person for whom notice has been ordered, at least ten days before the date of
13 intended release or discharge. For THE purposes of computing the ten-day
14 notice requirement, the day of mailing shall not be counted.

15 ~~G~~ H. Any person for whom prior notice is required pursuant to this
16 section, or the court, may make a motion within the ten-day notification
17 period ~~which~~ THAT requires the court to determine whether the standard for
18 release of the patient ~~prior to~~ BEFORE the expiration of the period for
19 court-ordered treatment has been met. A determination that the standard for
20 release has been met may be made by the court based on a review of the record
21 and any affidavits submitted without further hearing. For good cause, the
22 court may order an evidentiary hearing. Whether or not a hearing is held,
23 the court shall make a determination at the earliest possible time but no
24 longer than three weeks after the anticipated date of release pursuant to
25 subsection ~~F~~ G, and the patient shall be retained for the additional time
26 required for the court's determination. In making its determination the
27 court may order an independent examination of the patient. If no motion is
28 made, the patient may be released in accordance with the terms set forth in
29 the notice without further court order.

30 ~~H~~ I. If no motion has been made pursuant to subsection ~~G~~ H, the
31 patient may be released or discharged and the medical director of the mental
32 health treatment agency shall send to the court a certificate that the
33 patient is no longer a danger to others, a danger to self, persistently or
34 acutely disabled or gravely disabled as the result of a mental disorder and
35 therefore is released ~~prior to~~ BEFORE the expiration of the period ordered
36 for treatment. The court shall enter an order terminating the patient's
37 court-ordered treatment.

38 ~~I~~ J. The medical director of the mental health treatment agency
39 ~~shall~~ IS not ~~be held~~ civilly liable for any acts committed by a patient
40 released ~~prior to~~ BEFORE the expiration of the period of court-ordered
41 treatment if the medical director has in good faith followed the requirements
42 of this section.